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July 28, 1994

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FEDERAL COMMUNICATIONS COMMISSION
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BY HAND DELIVERY

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: ET Docket No. 93-7

Dear Mr. Caton:

Enclosed for filing are an original and nine copies of the Opposition and Comments of the Consumer Electronics Retailers Coalition with respect to Petitions for Reconsideration in the matter noted above.

An additional copy to be date stamped and returned with the messenger for our files is also enclosed.

Thank you for your assistance.

Sincerely yours,


Robert S. Schwartz

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

JUL 28 1994

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OFFICE OF SECRETARY

In the Matter of)

Implementation of Section 17 of the)
Cable Television Consumer Protection)
and Competition Act of 1992)

ET Docket No. 93-7

Compatibility Between Cable Systems)
and Consumer Electronics Equipment)

**OPPOSITION AND COMMENTS OF
CONSUMER ELECTRONICS RETAILERS COALITION**

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ET Docket No. 93-7

**OPPOSITION AND COMMENTS OF
CONSUMER ELECTRONICS RETAILERS COALITION**

The Consumer Electronics Retailers Coalition hereby responds to petitions for reconsideration and clarification that have been filed with respect to the First Report and Order in this proceeding, adopted April 4 and released May 4, 1994.^{1/} We urge the Commission to reject those petitions critical of its decisions, in pars. 29 and 42 of the Report and Order, to require separation of access control functions from other functions in set-top and set-back converter boxes. Indeed, we urge the Commission to further specify the requirements to be imposed on cable operators pursuant to par. 29 of the Report and Order.

I. INTRODUCTION

The Coalition includes Best Buy, Circuit City, Dayton Hudson, Montgomery Ward, Sears, Tandy, the International

^{1/}In the Matter of Compatibility Between Cable Systems and Consumer Electronics Equipment, First Report and Order, ET Docket No. 93-7, FCC 94-80.

Mass Retailers Association, the National Association of Retail Dealers of America, and the National Retail Federation. The Coalition entered this proceeding in the Reply stage, in support of Comments filed by Circuit City, because the Coalition represents the most direct, intended beneficiaries (aside from consumers) of Section 624A(c)(2)(C) of the Communications Act, which provides that the Commission's regulations must "promote the commercial availability, from cable operators and **retail vendors that are not affiliated with cable systems, of converter boxes** ..."

Both the Circuit City and Coalition filings urged that, in the long term, the only true answer to consumer electronics-cable compatibility is implementation of a digital standard for cable transmission that includes a National Renewable Security Standard.^{2/} We argued, however, that if these steps lie in the future, there are steps that the Commission can reasonably and immediately take to comply with the mandate of Section 624A(c)(2)(C), by requiring that the following principles apply to set-top and set-back converters:

- (1) Only functions directly and necessarily related to security should be reserved to system hardware/software provided by the cable operator;
- (2) Functions that can be offered on a competitive basis must be available competitively,

^{2/}The Commission determined in the Report and Order that such issues will be addressed in a new Notice of Inquiry in this proceeding.

through the offer by the cable operator of compatible hardware or software modules that perform the security function only; and

(3) Cable operators should be allowed to charge separately for security modules and, to avoid extension of monopoly into competitive markets, should not be allowed to "bundle" the price of competitive hardware with services.

The Coalition is gratified that the Commission directly and specifically implemented principles (1) and (2) in its Report and Order.^{3/} In par. 42, the Commission said:

We agree with [Circuit City and others] who argue that the Decoder Interface should provide the capability to separate signal access control functions from other functions served through the connector. This capability will allow non-security functions to be provided through new products offered by retail vendors to be incorporated into TV receivers and VCRs.

Accordingly, the Commission ordered that the parties developing a new Decoder Interface standard "must allow access control functions to be separated from other functions."

In par. 29, the Commission addressed implementation of principles (1) and (2) in set-top boxes.^{4/} After observing that it was not prepared to require that entire addressable

^{3/}The Commission reserved judgment on the question of pricing, as addressed in principle (3), at least with respect to "set-back" devices, pending further activities in this proceeding.

^{4/}Set-top boxes will be necessary, in some systems, for those TVs and VCRs that do not include Decoder Interface ports, which will not be mandatory even after these regulations take effect. Moreover, it now appears, from public comments of cable-consumer electronics compatibility advisory group ("CAG") participants, that at least until a national standard for digital transmission exists, set-top converter boxes will be necessary for digital cable transmissions, even to those TVs and VCRs that do boast a Decoder Interface port and module.

converters, containing descrambling equipment, be available at retail, the Commission said (emphasis supplied):

We do, however, recognize that it is possible to separate access control functions from other functions that may be performed in conjunction with the use of cable service, such as display of menus and decompression of digital signals. As discussed in [par. 42] **we support separation of these functions as a means for promoting competition in the market for equipment used to receive cable service.**

The Petition for Partial Reconsideration and Request for Clarification of the National Cable Television Association ("NCTA") urges the Commission to circumscribe the effect of par. 42, arguing that cable company "set-back" devices should not be inferior compared to cable company "set-top" devices. The Coalition opposes this petition. While NCTA does highlight an inconsistency in the Commission's implementation of its approach, the problem is not the Commission's insistence that its doctrine be enforced in the set-back interface (par. 42). The problem, rather, is the lack, thus far, of any specific measure enforcing the part of par. 29, with respect to set-top devices, quoted above.

Fortunately, a cure for this imbalance is readily at hand. The Coalition urges that the Commission clarify par. 29 of the Report and Order, to require that the access module that cable operators must offer separately to subscribers, to comply with par. 42, must also be offered separately as part of new set-top devices, to comply with par. 29. As of the effective date for including the Decoder

Interface in "cable-ready" products, all new set-top converter boxes should be required to consist of this operator-supplied access module, plus a feature module that subscribers may obtain either from the cable operator or from competitive retail sources.

II. A Proper Implementation of Pars. 29 and 42
Should Put Neither Cable Operators Nor Equipment
Manufacturers At A Competitive Disadvantage With
Respect to Features.

NCTA urges the Commission to "clarify" that separating access control functions from features does not mean that "cable operators are precluded from using the Decoder Interface module to provide functions other than the signal access control function." But this is precisely what the Report and Order does, and should, mean.

The Commission, implementing Section 624A(c)(2)(C), has plainly said that cable operators cannot load up access modules to include additional features that can and should be supplied competitively. This does not mean that cable operators cannot compete to supply these features. The Commission did not say this, and the Coalition never urged it. Rather, it should mean that if cable operators are to offer these non-access features, they must be supplied in hardware separate from the access module. The reason for this requirement is plain: if the only access modules offered by a cable operator have other features added in, a competitive market in supplying the hardware for those features (whether sold separately or built into TVs and

VCRs) will be preempted. Avoiding such preemption of competition is the Commission's entire point in pars. 29 and 42.

NCTA resists the clear mandate of par. 42 because it seeks to protect and perpetuate, in set-back devices, the feature monopoly it currently enjoys in addressable set-top boxes. It recognizes that, once set-back descrambling can be offered in access-only modules, a competitive market can and will arise in the hardware that supplies other features, and even in the features themselves. NCTA therefore argues that cable subscribers availing themselves of set-back decoders must be "entitled" to the same look, feel, and features that are built into the monopolized set-top cable presentation.

NCTA has identified a problem, but (in light of the law and the Commission's Order) has the solution backwards. The only solution that complies with Section 624A(c)(2)(C) is that **set-top cable customers be entitled to the same choice and competition in features as will be enjoyed by "set-back" customers.**

NCTA is right in observing that cable customers should enjoy the same competitive circumstance whether they use set-top or set-back equipment. It is right in insisting that cable operators not be at a competitive disadvantage in offering features in either circumstance. Where NCTA is wrong is assuming (1) that the set-top model -- cable operators routinely selling competitive features along with

access, without offering any hardware interface between the two -- is consistent with Section 624A(c)(2)(C) and should survive the Commission's mandate in par. 29; and (2) that a permissible solution is to put features **back into** the set-back access module. The solution that complies with the Cable Act is to **require the same modularity in set-top boxes as the Commission has required in the Decoder Interface.**

III. The Commission Should Clarify Par. 29 of the Report and Order to Require That the Access Module and Interface Developed for Set-Back Use Also Be Employed in New Operator-Supplied Set-top Applications.

The Commission has required that, by August 15, the parties developing specifications for the Decoder Interface submit these specifications to the Commission, in a format that separates access control hardware from other functional hardware. It now seems clear that this specification will result in an interface allowing cable operators to offer an access-only module. Other features should be available in complementary hardware, whether supplied by cable operators, built into TVs and VCRs, or supplied competitively at retail.

Assuming that a specification for an access-only module, and an appropriate interface for interconnection with controls and other features, have been or will be developed,^{5/} then the way for implementation of the Report

^{5/}The Commission noted in par. 42 that if the parties fail to submit an interface appropriately separating access from features, the Commission will take steps to achieve one.

and Order seems clear. If par. 29 is to have effect, and if equity between "set-top" customers and "set-back" customers is to be achieved, then the rules for offering the access-only module in the set-top and set-back contexts should be the same.

We agree with NCTA's concern that there should be a single implementation of "cable-ready." Fair and consistent "set-top" and "set-back" implementations should, in each case, include the interface developed in this proceeding. The hardware interface specification, as developed for set-back communication between access module, control signals, and features, will also be appropriate for joining the same access module to the feature hardware of new set-top converter boxes. Such parity should be achieved by specifically implementing the Commission's mandate in par. 29: the Commission should order that this interface be employed, to separate access hardware from feature hardware, in set-top boxes manufactured as of the date on which the same interface is to be required on cable-ready TVs and VCRs.

Once the interface specification is required for inclusion in set-top boxes, cable operators will still be able to offer a set-top box that includes both the access module and the feature module. Competitive sellers, however, will **also** be able to offer competitive feature modules. Initially, there may be few or no competitive products, and cable operators in some areas might routinely

supply converter boxes consisting of both modules. This solution, however (assuming no price distortions through bundling) allows feature competition to develop, to give the consumer a **choice** of ceasing to rent the cable operator's feature module, and replacing it with one procured separately.^{6/}

IV. CONCLUSION.

As we indicate at the outset, the Coalition believes the long-term answer to cable compatibility issues is a uniform national standard for digital transmission, including a National Renewable Security Standard. Only this approach will afford literal compliance with Section 624A(c)(2)(C), by preserving operator security interests while allowing all hardware to be sold under competitive circumstances. In the interim, however, the Commission should fully utilize its Decoder Interface specification to allow access control functions to be physically separated from other features in every sort of new converter box.

It is unclear to what extent the Decoder Interface, which is optional with the "cable-ready" label, will be offered in the market or accepted by consumers. It seems very clear, however, that the market in new-generation set-top converter boxes, purporting to introduce consumers to

^{6/}The development of a competitive market in feature modules also offers a solution for those cable operators who find capital scarce, and would prefer to invest in less hardware rather than more.

the National Information Infrastructure, is blooming. Par. 29 of the Commission's Report and Order says that these devices, like the ones subject to par. 42, ought to have access and feature hardware offered separately. Once the Commission has in hand the specification for an appropriate interface, it should require that this interface be incorporated in all new set-top boxes, so that a competitive market for feature modules, to mate with the operator-supplied access modules, can develop.

Respectfully submitted,

CONSUMER ELECTRONICS RETAILERS
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